SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

DECEMBER TERM, 1969

No. 982

O. FRANK THORNTON, SECRETARY OF STATE OF SOUTH CAROLINA, ROBERT W. TURNER, PETE B. ADAMS, BEN T. AUSTIN, III, W. EARL BEARD, SR., W. W. TAYLOR, JR., EUGENE R. OTT, AND JOHN E. MOON, APPELLANTS,

versus

CECIL D. CLAY, FELIX C. DAVIS, MINER W. CROSBY, CHARLES R. WEBB, ALBERT W. HUDSON AND R. WOODY ROGERS, APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

JURISDICTIONAL STATEMENT

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December 12, 1969.

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ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

JURISDICTIONAL STATEMENT

INTRODUCTION

Appellants appeal from the final Order and Judgment of the Supreme Court of South Carolina entered September 24, 1969, denying appellants' petition for rehearing and its judgment entered September 3, 1969, granting a permanent restraining order to the appellees.

OPINIONS BELOW

The decision of the Supreme Court of South Carolina is reported at 169 S. E. (2d) 617 (1969), and appears herein as Appendix A. No other written opinions have been delivered.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

This is a civil action instituted by the appellees in the original jurisdiction of the Supreme Court of South Carolina to restrain the Secretary of State from granting a Charter of Incorporation to the City of North Charleston and to further restrain the elected officials of that community from taking office. The appellees brought this action after a majority of those voters who voted in a special incorporation election had voted for incorporation of the area and elected municipal officials. The election was held pursuant to Code of Laws of South Carolina, § 47-353 (1962), which authorizes the Secretary of State to issue a Certificate of Incorporation if a majority of those voting in such election shall vote in favor of incorporation. The appellees contended in the State Supreme Court that this statute violated Article 8, Section 2 of the South Carolina Constitution of 1895, which provided that no city shall be organized without the consent of the majority of electors residing and entitled by law to vote within the area, their interpretation of this Section being that it required a majority vote of all eligible electors in the area proposed to be incorporated, whether voting or non-voting. The appellants contended that Article 8, Section of the South Carolina Constitution of 1895, if interpreted and applied in the manner urged by the appellees, would be invalid and unconstitutional because such an interpretation would be repugnant to the equal protection clause of the Fourteenth

Amendment to the United States Constitution. The decision of the Supreme Court of South Carolina adopted the interpretation urged by the appellees and ruled against the contention of unconstitutionality and in favor of the validity of Article 8, Section 2, as so interpreted.

The judgment or decree sought to be reviewed is the final ruling of the Supreme Court of South Carolina, entered September 24, 1969, denying appellants' petition for rehearing and its judgment entered September 3, 1969, granting a permanent restraining order to the appellees and declaring Section 47-353 of the 1962 South Carolina Code of Laws in violation of Article 8, Section 2 of the South Carolina Constitution of 1895. The Notice of Appeal was filed in the Supreme Court of South Carolina, the Court possessed of the record, on December 1, 1969.

Jurisdiction of the appeal is conferred on this Court by Title 28 of the United States Code, Section 1257 (2).

All appellants have standing to appeal since they are voters who voted with the majority of those voting in favor of incorporation, are the elected public officials of the area proposed to be incorporated and have substantial and vital interests involved in that their right to cast an effective vote has been impaired by the decision appealed from.

The following decisions sustain and exemply the jurisdiction of this Court to review, as in this case, a state constitutional provision on the ground that it is repugnant to the United States Constitution, *Railway Express Agency v. Virginia*, 282 U. S. 440; *Adamson v. California*, 332 U. S. 46.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article 8, Section 2, of the South Carolina Constitution of 1895 provides:

> "No city or town shall be organized without the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated; such consent to be ascertained in the manner and under such regulations as may be prescribed by law."

Section 47-353 of the 1962 South Carolina Code of Laws provides in part:

> "If a majority of those voting in such election shall vote in favor of such proposed territory being incorporated, then the Secretary of State shall issue a Certificate of Incorporation of said proposed City, under this Act . . ."

QUESTION PRESENTED BY THIS APPEAL

The following question is presented by this Appeal:

> "Does Article 8, Section 2 of the South Carolina Constitution of 1895 as interpreted and applied by the South Carolina Supreme Court to require more votes for incorporation of a city than a majority of those voting in an election for incorporation deprive the majority of those voting including appellants, of the Equal Protection of the Laws as guaranteed by the Fourteenth Amendment to the United States Constitution?"

STATEMENT OF THE FACTS OF THE CASE

On June 17, 1969, a special incorporation election was held in accordance with South Carolina Statutes in an area designated as North Charleston, which is located north of the present City of Charleston, South Carolina,

and includes approximately 34 square miles and in excess of 94,000 inhabitants. There were approximately 16,900 electors qualified to vote in this area and of these 7,315 cast ballots in the election with 4,572 voters, a clear majority, voting in favor of incorporation. The appellants, with the exception of the Secretary of State, all voted in the election in favor of incorporation and were elected as mayor and aldermen of the proposed city. The results of the election were certified to the appellant Secretary of State for the issuance of a Charter of Incorporation in accordance with Section 47-353 of the Code of Laws of South Carolina (1962), which requires the Secretary of State to issue such a Charter if a majority of those voting in an incorporation election voted in favor thereof. The appellees, as electors and taxpayers, brought this action to restrain the Secretary of State from issuing the Charter and the mayor and aldermen from taking office. The appellees contended that Section 47-353 of the State Code violated Article 8, Section 2 of the South Carolina Constitution of 1895, which requires the consent of a majority of all the qualified electors in an area before a town may be organized. A temporary restraining order was issued and The Supreme Court of South Carolina assumed original jurisdiction of the case because of the immediate public interest involved.

The appellant in its brief, oral argument and petition for rehearing raised the following Federal question which it is asking this Court to review:

> "Would Article 8, Section 2 of the South Carolina Constitution of 1895, be contrary to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, if it is interpreted to require more votes for incorporation than a majority of those voting in the election?"

The Supreme Court of South Carolina specifically decided against appellants on this issue now presented to this Court on appeal, stating:

> "The foregoing argument is based upon the principles announced by the United States Supreme Court in the recent reapportionment cases, citing *Reynolds v. Sims*, 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. (2d) 506, among others. These principles have no application here." (P. 18, App., A.)

In its decision, the South Carolina Supreme Court applied and enforced, to the appellants disadvantage, a state constitutional provision which the appellant, in its brief and at all subsequent stages, insisted was, if so applied and enforced, repugnant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

THE FEDERAL QUESTION PRESENTED IS SUBSTANTIAL

The particular question presented on this appeal has never been passed upon directly by this Court. Nevertheless, the circumstance of direct appeal brings, once again, before this Court the fundamental question of the scope of the Equal Protection Clause and the principle of one man-one vote.

A. The substantial importance of such a federal question as that presented by this appeal has been clearly demonstrated previously by this Court.

This Court's decisions, in the area of the application of the Equal Protection Clause to the individual's right of franchise, establishes the importance which the Court has placed upon such issues. No case more clearly demonstrates this point than the Court's decision in *Reynolds v.*

Sims, 377 U. S. 533 (1964), where it re-emphasized the fundamental position that:

> "Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Ibid.*, p. 562. See also *Kramer v. Union Free School District*, 89 S. Ct. 1886 (1969).

Indeed, the question presented to the Court by this Appeal raises the same issue, an infringement of the citizens' right of effective franchise.

B. The history and principles of the decisions of this Court do not support the decision of the South Carolina Supreme Court, but require its reversal.

The Supreme Court of South Carolina, rejecting the decisions of this Court which have held that the Equal Protection Clause and the principle of one man—one vote is a fundamental right, determined that the State Constitution in Article 8, Section 2, required that a majority of all qualified voters, those voting and those not voting, is needed in an election to allow the incorporation of a town or city. In so holding, the State Court stated that, "These principles have no application here".

Such a decision ignores the fundamental principles and objectives of the Equal Protection Clause as enunciated by this Court. Recently, this Court had occasion, once again, to deal with the area of the Equal Protection Clause and the right of franchise. In its opinion, the Court restated the basic principle that, "Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Kramer v. Union Free School District*, 89 S. Ct. 1886 (1969). See also *Harper v. Virginia Bd. of Election*, 330 U. S. 665.

Since the decision of the State Supreme Court recognized a right of incorporation and its exercise through the franchise, but held that more than a majority of those voting was required for favorable State action in establishing the town, the right of franchise has been given to the people but has been subjected to limitation by the number of votes required.

The question then presented is whether such a "line" or "limitation" imposed by the State through Article 8, Section 2, is inconsistent with the Equal Protection Clause. This Court has noted, throughout its decisions on the right of franchise, the wide range of State limitations and discriminations within the reach of the Equal Protection Clause. In speaking of such limitations the Court has said: "One must be ever aware that the Constitution forbids sophisticated as well as simple-minded modes of discrimination" and, furthermore, that "the rights of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting, the free exercise of the franchise". *Reynolds v. Sims*, 377 U. S. 533 (1964). Indeed, in the case before this Court, the State Supreme Court's application of Article 8, Section 2, of the State Constitution has resulted in the "debasement or dilution" of the vote of those voting in favor of incorporation, because the effect of the provision is to add the non-votes to the negative votes cast. Under the actual facts of this case, each negative vote has been given the effect of one and two-thirds affirmative vote. This is not only a violation of the Equal Protection Clause but negates a basic principle of construction espoused by this Court that "all qualified voters who absent themselves from an election are presumed to assent to the express will of the majority of those voting." *Cass County v. Johnston*, 95 U. S. 360.

C. The decision of the Supreme Court of South Carolina is in direct conflict with recent decisions of other states.

The need for resolution of the question presented by this Appeal is clearly demonstrated by the recent division of judicial opinion in the State Courts. In the recent West Virginia case of *Lance v. Roane County Board of Education* (Opinion No. 12809, July 8, 1969; petition for rehearing denied December 2, 1969) that State's Supreme Court held that the state constitutional requirement of a two-thirds and sixty per cent affirmative vote of electors for various bond issues was a denial of Equal Protection of the Laws under the Fourteenth Amendment and, therefore, unenforceable. In reaching their decision, the West Virginia Court stated:

> "We are of the opinion that the one person, one vote principle is now firmly established in broad general terms without qualification or exception. Certainly the right of the voter to equal protection against the dilution or debasement of the weight or force of an individual's vote, is fully as sound, sacred and important when he is voting on issues involving taxation, public revenue and the promotion of an adequate public school system, as when he is voting for the nomination or election of a constable, a state senator, a governor or any other public official to represent the voter in government."

It should be noted, that the West Virginia Court relied on this Court's decisions in the area of reapportionment, including the landmark case of *Reynolds v. Sims*, 377 U. S. 533. Thus, this decision relied on the same decisions which the South Carolina Court held had no application.

In the case of *Bogert et al. v. Kinzer et al:* (Register No. 27864, 6th Judicial District of the State of Idaho,

County of Bannock, now under appeal and pending in the Supreme Court, State of Idaho, argument heard September 9, 1969), the trial court in a memorandum opinion held that provisions of Idaho Constitution and Statutory law requiring a two-thirds majority vote for approval of a bond proposition for the construction of an airport terminal and a municipal swimming pool were violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and this Court's decisions in *Baker v. Carr,* 369 U. S. 186, 7 Law Ed. 2nd 663; *Gray v. Sanders,* 372 U. S. 386, 9 Law Ed. 2nd 821. The Court stated:

> "By virtue of debasing the vote of one who is voting 'yes' as against the one who is voting 'no', the minority can prevent an educational system, recreation, roads or anything else that require the municipality to be indebted."

Among other cases in litigation, there is now pending before the Supreme Court of California, in its original jurisdiction (Petitions, for Writ of Mandate, filed November 21, 1969, *Westbrook et al. v. Mihaly,* SF 22706; *Adams v. Mihaly,* SF 22707) the question of whether California Constitutional and Statutory provisions requiring the assent of two-thirds of the qualified voting electors for such projects as school facilities, creation of new recreational parks and the modernization of present recreational facilities are violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

In addition, the Superior Court of Sutter County, California, in the case of *Larez et al. v. Shannon et al.,* Opinion No. 16043, August 8, 1969), decided California's 90-year-old constitutional provision requiring a two-third majority for approval of certain bond issues were in violation of the Equal Protection Clause of the Fourteenth

Amendment. That decision was appealed on December 3, 1969, to the 3rd Judicial Circuit of the California Court of Appeals.

Likewise, still another state, New Mexico, held that its constitutional provision requiring that ratification of any amendment dealing with elective franchise or education had to be ratified by at least two-thirds of those voting in each county was invalid under "one person one vote" principle and the Equal Protection Clause. *State v. State Canvassing Board,* 78 N. M. 682, 437 P. (2d) 143 (1968). These recent decisions from other states dealing with situations and issues similar to the one presented by this case on appeal are an important reason why the Court should resolve the question presented here.

D. The decision of the State Court is far reaching in its actual and practical effect on the appellants and others similarly situated.

The importance of the question presented to the Court by this appeal is clearly revealed in the adverse effect of the State Courts' decision on the appellants and other citizens of South Carolina. For the appellants and other citizens of the North Charleston area, the decision has for all practical purposes denied to them the means of dealing with the critical problems and requirements of a cosmopolitan area through the agency of local self-government. This regretful situation is evident from the fact that the amount of votes that would be required by the State Constitutional provision is actually and historically an unattainable goal. This is illustrated by the fact that such a quantity of voters has never voted in any election held in the area to be incorporated. This situation, likewise, exists for the citizens of any other area in the State who may desire to form a local government in the future. This historical lack of electorate participation in South Carolina

was recognized by the Congress of the United States when it applied the Voting Rights Act of 1965 to South Carolina and other southern states. 42 U. S. C. 1973b. The decision of the Supreme Court of South Carolina has, therefore, not only diluted and debased the citizens vote, but has also denied to them the fundamental right granted by the State to form a government representative of the people and responsible to its local needs.

CONCLUSION

For the reasons stated, appellants respectfully submit the question presented in this appeal is so substantial as to require plenary consideration, with briefs on the merits and oral arguments.

Respectfully submitted,

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APPENDIX A

DECISION OF THE SUPREME COURT OF SOUTH CAROLINA

CECIL D. CLAY, FELIX C. DAVIS, MINER W. CROSBY, CHARLES R. WEBB, ALBERT W. HUDSON AND R. WOODY ROGERS, PETITIONERS,

versus

O. FRANK THORNTON, SECRETARY OF STATE OF SOUTH CAROLINA, ROBERT W. TURNER, PETE B. ADAMS, BEN T. AUSTIN, III, W. EARL BEARD, SR., W. W. TAYLOR, JR., EUGENE R. OTT, AND JOHN E. MOON, RESPONDENTS.

IN THE ORIGINAL JURISDICTION

Opinion No. 18958
Filed September 3, 1969

PETITION GRANTED

G. M. Howe, Jr.; and Sinkler, Gibbs & Simons, all of Charleston, for petitioners.

Hans F. Paul, of Charleston Heights; James E. Gonzales, of Charleston; and Berry, Lightsey, Gibbes & Bowers, and Attorney General Daniel R. McLeod, all of Columbia, for respondents.

LEWIS, A. J.: The question to be decided is whether the provision of Section 47-353 of the 1962 Code of Laws, which permits a proposed city or town of over 5,000 inhabitants to be incorporated upon the consent of only a "majority of those voting" in an election held for such purpose, is unconstitutional as conflicting with the provisions of Article 8, Section 2, of the Constitution of this State, which prohibits the organization of any city or town "with-

out the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated."

The consent necessary for the incorporation of a proposed city or town in this State is governed by the requirements of Article 8, Section 2, of the Constitution, which states that "no city or town shall be organized without the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated; such consent to be ascertained in the manner and under such regulations as may be prescribed by law."

The foregoing constitutional provision was implemented by the Legislature, with reference to the incorporation of proposed cities and towns containing more than 5,000 inhabitants, by the adoption of Section 47-351, *et seq.* of the 1962 Code of Laws. Under these statutes, the consent of the electors to incorporation must be obtained in an election held for such purpose. However, instead of using the language of the Constitution with reference to the consent necessary to incorporate an area, Section 47-353 permits the issue of incorporation to be determined by "a majority of those voting in such election." When a majority of those so voting favor incorporation and such result is certified to the Secretary of State, he is required to issue a certificate of incorporation to the proposed city.

Therefore, while Article 8, Section 2, requires the "consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated," Section 47-353 permits the question of incorporation to be determined by only "a majority of those voting in such election." It is this apparent conflict between the Constitution and the statute which must be resolved.

The question at issue arises out of an attempt to incorporate an area designated as North Charleston, located north of the present City of Charleston, South Carolina, and containing in excess of 94,000 inhabitants. An election was held on June 17, 1969 in the proposed area, in accordance with the statutes, to determine whether it would be

incorporated and to name a mayor and aldermen of the proposed city. There are approximately 16,900 electors residing and entitled by law to vote within the area proposed to be incorporated. Of the qualified electors, 7,315 cast ballots in the election with a majority (4,572) of these voting in favor of incorporation. Therefore, it is apparent that, while a majority of those voting voted favorably, a majority of the 16,900 qualified electors in the area did not cast ballots in favor of incorporation.

Since a majority of those voting in the election voted in favor of incorporation, as required by Section 47-353, the results were certified to the Secretary of State for the issuance of a certificate of incorporation. This action was then brought by the petitioners, as electors and taxpayers in the area proposed to be incorporated, against the respondents, the Secretary of State and those elected mayor and aldermen of the proposed city, to enjoin the Secretary of State from issuing the certificate and the mayor and aldermen from taking office, upon the ground that Section 47-353, under which incorporation was attempted is unconstitutional as conflicting with Article 8, Section 2, of the Constitution. A temporary restraining order was granted so enjoining the respondents, and a rule issued requiring them to show cause why the temporary restraining order should not be made permanent. The Secretary of State, through the Attorney General, has filed a brief upholding the position of petitioners. The respondents, mayor and aldermen of the proposed city, appear in opposition. We assumed original jurisdiction because of the immediate public interest involved.

In determining whether a "majority of those voting" in the election satisfies the constitutional requirement that incorporation cannot be accomplished "without the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated," It is elementary that the constitutional provision must be given controlling effect. If the statutory provision in question does not satisfy the constitutional requirement, the statute is to such extent unconstitutional and the

attempt to incorporate the North Charleson area is of no legal effect.

We find the language of Article 8, Section 2, clear, plain, and unambiguous. It requires that a majority of the qualified electors in the area to be incorporated must consent to incorporation, but leaves to the Legislature the right to prescribe how "such consent" of the designated majority is to be ascertained. The constitutional provision does not require an election to ascertain consent, and the Legislature might have just as properly provided for consent to be ascertained through a petition. If the petition method had been adopted, certainly it could not be validly contended that the constitutional requirement could be met by a petition containing the approval of less than a majority of all of the qualified electors in the area. By not specifically designating the method of ascertaining consent and leaving this for legislative determination, the intent was clearly evidenced that, under whatever method adopted, the actual consent of a majority of the electors in the area must be obtained to incorporate a town or city. The meaning of the constitutional mandate does not vary according to the method adopted by the Legislature to implement it.

The argument of the respondents, who attempt to uphold the constitutionality of Section 47-353, concedes, in effect, that the Constitution requires the consent of more than a mere majority of those voting in the election. They contend, however, that the constitutional majority has been obtained in this case since, under the principle stated in *Cass County v. Johnston*, 95 U. S. 360, 24 L. Ed. 416, and applied in *Paris Mountain Water Company v. City of Greenville*, 110 S. C. 36, 96 S. E. 545, "all qualified voters who absent themselves from an election duly called are presumed to assent to the expressed will of the majority of those voting."

We need not pursue the rationale of the principle stated in the Cass County case and assume its applicability where the controlling law requires the requisite consent to incorporation to be determined by an election. The principle has no application, however, where, as in this

case, the **actual** consent of the designated majority is required regardless of the method used to ascertain it.

While the question was not directly in issue, the construction which we have placed on Article 8, Section 2, has been approved in at least two prior decisions of this court in construing other provisions of the Constitution. *Paris Mountain Water Co. v. City of Greenville, supra,* 110 S. C. 36, 96 S. E. 545; *Whitemire v. Cass,* 213 S. C. 230, 49 S. E. (2d) 1.

In *Paris Mountain Water Company,* the Court stated:

> "We find no provision in the Constitution which prescribes that a majority of all the electors, those voting and those not voting, shall be necessary to carry an election by the people **save in one instance, and that refers to an election to determine if a town shall be incorporated. Article 8, Section 2.**" (Emphasis added.)

In determining whether Article 8, Section 2, applied to the annexation of areas to a municipality, the Court stated in *Whitmire*:

> "Should the quoted provision of the constitution (Article 8, Section 2) be held applicable and controlling here, then it would necessarily follow that the annexation election failed to carry, because it is evident . . . that a majority of all the qualified electors . . ., those voting and those not voting, did not vote for annexation."

Finally, it is argued that the requirement of Article 8, Section 2, of the South Carolina Constitution, results in a denial to the majority of those voting in the election in favor of incorporation, where such majority is less than a majority of all qualified electors, of the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution. Apparently, the contention is that equal protection is denied because the requirements of Article 8, Section 2, deprives the majority, who have voted favorably in the election, of the presumption that all who absented themselves from the elec-

tion are deemed to assent to the expressed will of the majority of those voting—in other words, the failure to indulge such presumption makes the vote of each member of the majority voting in favor of incorporation less effectual. The respondents reason that the effect of Article 8, Section 2, is to add the "non-votes to the negative votes cast," if the foregoing presumption is not indulged, thereby diluting the votes of those persons voting for incorporation.

The foregoing argument is based upon the principles announced by the United States Supreme Court in the recent reapportionment cases, citing *Reynolds v. Sims*, 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. (2d) 506, among others. These principles have no application here.

As previously pointed out, Article 8, Section 2, does not require an election. It is simply the exercise by the State of South Carolina of its right to prescribe the requirements for incorporation of municipalities. Under its provisions, a majority of those expressing themselves favorably on the question of incorporation, if less than a majority of all qualified electors, cannot require that an area be incorporated as a town or city. The present argument is, in effect, not that those favoring incorporation are deprived of equal protection, but rather that their votes are not given the effect of overriding the clear constitutional requirement for incorporation of municipalities. Such result cannot be accomplished under the guise of equal protection.

Therefore, regardless of the method adopted to ascertain consent to the incorporation of a town or city, we hold that Article 8, Section 2, of the South Carolina Constitution requires the actual consent of a majority of all qualified electors in the area proposed to be incorporated. To the extent that Section 47-353 permits incorporation upon the actual consent of less than a "majority of the electors residing and entitled by law to vote within the district proposed to be incorporated," it is hereby declared to be unconstitutional. Since the consent of the required majority was not obtained in the election held in this case, the attempt to incorporate the North Charleston area is null, void, and of no legal effect.

The temporary restraining order heretofore granted is accordingly made permanent.

Petition granted.

MOSS, BUSSEY, BRAILSFORD and LITTLEJOHN, JJ., concur.

APPENDIX B

ORDER DENYING PETITION FOR REHEARING

September 24, 1969

Messrs. BERRY, LIGHTSEY, GIBBES
and BOWERS
1518 Washington Street
Columbia, South Carolina

Re: *Clay, et al. v. Thornton, et al.*

Gentlemen:

The Court has this day refused your petition for rehearing in the above case in the following order:

"PETITION DENIED.

/s/ Joseph R. Moss	C. J.
/s/ J. Woodrow Lewis	A. J.
/s/ J. M. Brailsford	A. J.
/s/ Thos. P. Bussey	A. J.
/s/ Bruce Littlejohn	A. J."

The opinion is being released for publication today.

FRANCES H. SMITH,
Clerk.

FHS:ml
CC: G. M. Howe, Jr., Esquire.